

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ASHBY GERIATRIC HOSPITAL, INC.,
d/b/a ASHBY GERIATRIC HOSPITAL

and

Case 32--CA--11566

HOSPITAL AND HEALTH CARE WORKERS'
UNION, LOCAL 250, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL--CIO

July 19, 1991
DECISION AND ORDER

by Members Devaney, Orloff, and Raudabaugh
Upon a charge filed by the Union December 13, 1990, the General Counsel

of the National Labor Relations Board issued a complaint January 29, 1991, against Ashby Geriatric Hospital, Inc., d/b/a Ashby Geriatric Hospital, the Respondent, alleging that it had violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On May 3, 1991, the General Counsel filed a Motion for Summary Judgment. On May 8, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated March 21, 1991, notified the Respondent that unless an answer was filed by March 28, 1991, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

At all times material, prior to November 20, 1990, the Respondent, a California corporation with an office and place of business in Berkeley, California, was engaged in the operation of a long-term health care facility. During the 12 months preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$250,000 and purchased and received goods or services valued in excess of \$5000 which originated outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time certified nurses aides, certified cooks, nurse aides, kitchen helpers, housekeeping and laundry workers; excluding all other employees, guards, and supervisors as defined in the Act.

Since about 1978, and at all times material, the Union, by virtue of Section 9(a) of the Act, has been the representative for the purposes of collective bargaining of a majority of the employees in the above-described unit, and since about 1978, the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements between the Respondent and the Union, the most recent of which was effective by its terms for the period April 16, 1987, through April 15, 1990.

About July 23, 1990, the Union and the Respondent reached full agreement on a successor collective-bargaining agreement, retroactive to April 16, 1990. Since about October 16, 1990, the Union has requested the Respondent to execute a written document embodying the terms of the successor agreement, and the Respondent has refused to do so.

We find that by these actions the Respondent has failed and refused to bargain collectively and in good faith with the Union, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusion of Law

By refusing to execute a successor collective-bargaining agreement after it and the Union reached full agreement on the successor agreement's terms, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to execute the successor collective-bargaining agreement and to honor and give retroactive effect to the agreement's terms and conditions. We shall also order the Respondent to make unit employees whole for any losses they may have suffered as a result of the Respondent's refusal to execute and honor the successor agreement's provisions, in the manner prescribed in Ogle Protection Service, 183 NLRB 682, 683 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).¹

ORDER

The National Labor Relations Board orders that the Respondent, Ashby Geriatric Hospital, Inc., d/b/a Ashby Geriatric Hospital, Berkeley, California, its officers, agents, successors, and assigns, shall

¹ Par. 2(a) of the complaint states, "At all times material herein, prior to November 20, 1990, Respondent, a California corporation with an office and place of business in Berkeley, California, was engaged in the operation of a long-term health care facility." The record indicates that the Respondent ceased operating its Berkeley facility on November 20, 1990. We leave to the compliance stage of this proceeding a determination of the effect of this cessation on the remedy. We shall provide for mail notice to employees.

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the Hospital and Health Care Workers' Union, Local 250, Service Employees International Union, AFL--CIO by refusing to execute a successor collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute and honor the successor collective-bargaining agreement, giving retroactive effect to its terms and conditions.

(b) Make whole the unit employees for any losses resulting from the Respondent's failure to execute and honor the successor agreement, with interest, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Mail a copy of the attached notice marked ''Appendix''² to the last known address of all unit employees who were employed at the Berkeley, California facility from April 16, 1990, to November 20, 1990. Copies of the notice, on forms provided by the Regional Director for Region 32, after being

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 19, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain collectively and in good faith with the Hospital and Health Care Workers' Union, Local 250, Service Employees International Union, AFL--CIO by refusing to execute a successor collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, execute and honor the successor collective-bargaining agreement and give retroactive effect to its terms and conditions.

WE WILL make whole our employees, with interest, for any losses resulting from our failure to execute and honor the successor agreement.

ASHBY GERIATRIC HOSPITAL, INC.,
d/b/a ASHBY GERIATRIC HOSPITAL

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 2201 Broadway, Second Floor, Oakland, California 94612-3017, Telephone 415--273--6122.